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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

)
ABANTE ROOTER AND PLUMBING) Case No.
INC, individually and on behalf of all)
others similarly situated,)
)
) **CLASS ACTION**
)
Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**
)
vs.)
)
) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
LGCY POWER, LLC; and DOES 1) CONSUMER PROTECTION
through 10, inclusive, and each of them,) ACT [47 U.S.C. §227(b)]
)
) 2. WILLFUL VIOLATIONS
Defendant.) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(b)]
)
)
) **DEMAND FOR JURY TRIAL**
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)
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)

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

1 6. The above named Defendant, and its subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
7 Complaint to reflect the true names and capacities of the DOE Defendants when
8 such identities become known.

9 7. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions complained
14 of herein was made known to, and ratified by, each of the other Defendants.

15 **FACTUAL ALLEGATIONS**

16 8. Beginning in or around August 26, 2020, Defendant contacted
17 Plaintiff on Plaintiff’s cellular telephone number ending in -3803, in an attempt to
18 solicit Plaintiff to purchase Defendant’s services.

19 9. Defendant used an “automatic telephone dialing system” as defined
20 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

21 10. Defendant contacted or attempted to contact Plaintiff from telephone
22 numbers confirmed to belong to Defendant, including without limitation (210) 336-
23 1159.

24 11. Defendant’s calls constituted calls that were not for emergency
25 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

26 12. Defendant’s calls were placed to telephone number assigned to a
27 cellular telephone service for which Plaintiff incurs a charge for incoming calls
28 pursuant to 47 U.S.C. § 227(b)(1).

1 persons within the United States who received any solicitation/telemarketing
2 telephone calls from Defendant to said person's cellular telephone made through
3 the use of any automatic telephone dialing system or an artificial or prerecorded
4 voice and such person had not previously not provided their cellular telephone
5 number to Defendant within the four years prior to the filing of this Complaint.

6 20. Defendant, its employees and agents are excluded from The Class.
7 Plaintiff does not know the number of members in The Class, but believes the
8 Class's members number in the thousands, if not more. Thus, this matter should
9 be certified as a Class Action to assist in the expeditious litigation of the matter.

10 21. The Class is so numerous that the individual joinder of all of its
11 members is impractical. While the exact number and identities of The Class
12 members are unknown to Plaintiff at this time and can only be ascertained through
13 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
14 The Class includes thousands of members. Plaintiff alleges that The Class
15 members may be ascertained by the records maintained by Defendant.

16 22. Plaintiff and members of The Class were harmed by the acts of
17 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
18 and The Class members via their cellular telephones thereby causing Plaintiff and
19 The Class members to incur certain charges or reduced telephone time for which
20 Plaintiff and The Class members had previously paid by having to retrieve or
21 administer messages left by Defendant during those illegal calls, and invading the
22 privacy of said Plaintiff and The Class members.

23 23. Common questions of fact and law exist as to all members of The
24 Class which predominate over any questions affecting only individual members of
25 The Class. These common legal and factual questions, which do not vary between
26 Class members, and which may be determined without reference to the individual
27 circumstances of any Class members, include, but are not limited to, the following:

28 a. Whether, within the four years prior to the filing of this

1 Complaint, Defendant made any telemarketing/solicitation call
2 (other than a call made for emergency purposes or made with
3 the prior express consent of the called party) to a Class member
4 using any automatic telephone dialing system or any artificial
5 or prerecorded voice to any telephone number assigned to a
6 cellular telephone service;

7 b. Whether Plaintiff and The Class members were damaged
8 thereby, and the extent of damages for such violation; and

9 c. Whether Defendant should be enjoined from engaging in such
10 conduct in the future.

11 24. As a person that received numerous telemarketing/solicitation calls
12 from Defendant using an automatic telephone dialing system or an artificial or
13 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
14 claims that are typical of The Class.

15 25. Plaintiff will fairly and adequately protect the interests of the members
16 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
17 class actions.

18 26. A class action is superior to other available methods of fair and
19 efficient adjudication of this controversy, since individual litigation of the claims
20 of all Class members is impracticable. Even if every Class's member could afford
21 individual litigation, the court system could not. It would be unduly burdensome
22 to the courts in which individual litigation of numerous issues would proceed.
23 Individualized litigation would also present the potential for varying, inconsistent,
24 or contradictory judgments and would magnify the delay and expense to all parties
25 and to the court system resulting from multiple trials of the same complex factual
26 issues. By contrast, the conduct of this action as a class action presents fewer
27 management difficulties, conserves the resources of the parties and of the court
28 system, and protects the rights of each Class member.

1 27. The prosecution of separate actions by individual Class members
2 would create a risk of adjudications with respect to them that would, as a practical
3 matter, be dispositive of the interests of the other Class members not parties to such
4 adjudications or that would substantially impair or impede the ability of such non-
5 party Class members to protect their interests.

6 28. Defendant has acted or refused to act in respects generally applicable
7 to The Class, thereby making appropriate final and injunctive relief with regard to
8 the members of the Classes as a whole.

9 **FIRST CAUSE OF ACTION**

10 **Negligent Violations of the Telephone Consumer Protection Act**

11 **47 U.S.C. §227(b).**

12 **On Behalf of The Class**

13 29. Plaintiff repeats and incorporates by reference into this cause of action
14 the allegations set forth above at Paragraphs 1-28.

15 30. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
18 *47 U.S.C. § 227 (b)(1)(A)*.

19 31. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
20 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
21 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

22 32. Plaintiff and The Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of The Class

33. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

35. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

37. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 28th Day of May, 2021.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff